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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,593	10/01/2003	Ronald L. Brookshire	1088.008	7971
7590	10/14/2004		EXAMINER	
John L. Rogitz, Esq. ROGITZ & ASSOCIATES Suite 3120 750 "B" Street San Diego, CA 92101			KRECK, JOHN J	
			ART UNIT	PAPER NUMBER
			3673	
DATE MAILED: 10/14/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/676,593	BROOKSHIRE ET AL.
Examiner	Art Unit	
John Kreck	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 September 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-3 and 5-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-3,5-20 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: ____ .

DETAILED ACTION

The amendment dated 9/8/04 has been entered.

Claims 1-3 and 5-20 are pending.

Claim Rejections - 35 USC § 102 and 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-3, and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Adkins, II (United States Patent number 5,131,888).

Adkins shows the fan module; at least one fan (12) in the module; at least one battery (18); and solar panel (15). Adkins also shows the fan pipe ("housing") and flanges. Adkins fails to explicitly disclose the fan disposed between the flanges as

called for in claim 1. It is noted that Adkins discloses that reference number 13 designates an "exhaust fan housing" with flanges at either end. The accepted meaning of the term "housing" indicates that the fan should be located within; thus it is believed that Adkins intends for the fan to be between the flanges; alternatively, it would have been obvious to one of ordinary skill in the art at the time of the invention to have made the fan between the flanges, so that the housing (i.e. flanges) would protect the fan from damage.

Adkins also shows the DC fan as called for in claim 2.

Adkins also shows the axial fan as called for in claim 3.

Adkins also shows the array as called for in claim 7.

Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adkins.

Adkins teaches a 12 volt battery, but fails to explicitly disclose the type of battery. Official Notice is taken of the fact that 12 volt lead acid batteries are commonly used because they are relatively inexpensive and durable. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins system to have a lead acid battery as called for in claim 6.

Adkins fails to teach the voltage controller disposed between the solar panel and battery. Official Notice is taken of the fact that a voltage controller disposed between the solar panel and battery is customary, since solar panel voltage can fluctuate;

resulting in charging problems. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins system to have a voltage controller disposed between the solar panel and battery as called for in claim 8.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adkins in view of any one of Finley (United States Patent number 776,310); West (United States Patent number 349,549) or Bates (United States Patent number 98,833).

Adkins fails to show the support rod. Such support rods are well known and old as evidenced by the cited patents; they are used to strengthen the joint and reduce the number of nuts required. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to have a support rod as called for in claim 5.

Claims 9, 11, 12, 13, 14, 15, 16, 17, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longo, Sr. (United States Patent number 5,857,807) in view of Adkins.

Longo teaches the process of extracting gas from a landfill which uses a well pipe and fan.

Adkins teaches a fan module process which includes the steps of energizing and recharging. The Adkins fan is advantageous in that it is inexpensive and portable. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Longo process to have included installing a fan module in the well,

energizing the fan, and recharging the battery as called for in claim 9; since the fan module and solar cell are inexpensive and portable.

Adkins teaches a 12 volt battery, but fails to explicitly disclose the type of battery. Official Notice is taken of the fact that 12 volt lead acid batteries are commonly used because they are relatively inexpensive and durable. It would have been further obvious to one of ordinary skill in the art at the time of the invention to have used a lead acid battery as called for in claim 11.

Adkins teaches an axial fan as called for in claim 12.

With regards to claim 13; the rate of gas production is deemed to be a matter of engineering design: it would have been obvious to one of ordinary skill in the art at the time of the invention to have operated the fan such that gas would exhaust at .40scfm.

Adkins teaches maintaining 12 volts DC as called for in claim 14.

Regarding independent claim 15:

Longo teaches a system including fan means in communication with a landfill well. Longo fails to teach the battery and solar power means.

Adkins teaches a fan system including battery and solar power. The Adkins fan is advantageous in that it is inexpensive and portable.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins process to have battery means and solar means

as called for in claim 15; since the fan module with battery and solar cell are inexpensive and portable.

Adkins teaches a 12 volt battery, but fails to explicitly disclose the type of battery. Official Notice is taken of the fact that 12 volt lead acid batteries are commonly used because they are relatively inexpensive and durable. It would have been further obvious to one of ordinary skill in the art at the time of the invention to have used a lead acid battery as called for in claim 16.

Adkins teaches the axial fan as called for in claim 17.

Adkins teaches the pipe and flanges as called for in claim 18.

Adkins fails to teach the voltage controller disposed between the solar panel and battery. Official Notice is taken of the fact that a voltage controller disposed between the solar panel and battery is customary, since solar panel voltage can fluctuate; resulting in charging problems. It would have been obvious to one of ordinary skill in the art at the time of the invention to have a voltage controller disposed between the solar panel and battery as called for in claim 20.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Longo and Adkins and further in view of any one of Finley (United States Patent number 776,310); West (United States Patent number 349,549) or Bates (United States Patent number 98,833)

Adkins fails to show the support rod. Such support rods are well known and old as evidenced by the cited patents; they are used to strengthen the joint and reduce the

number of nuts required. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to have a support rod as called for in claim 19.

Response to Arguments

1. Applicant's arguments with respect to claim 1 have been considered but are largely moot in view of the new ground(s) of rejection. Applicant's speculation that Adkins shows the fan "co-planar with the flange" is not supported by the Adkins reference. Figure 3 of Adkins (which is designated a "side view") fails to show any structure extending past the flange. In fact, the end of the fan blades in figure 1 appear to suggest the fan below the flange.
2. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention

where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Adkins clearly indicates "Another objects of the invention is to provide a solar exhaust fan which is inexpensive and easy to fabricate.".

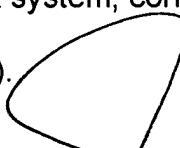
3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is (703)308-2725. The examiner can normally be reached on M-F 5:30 am - 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703)308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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PRIMARY EXAMINER
John Kreck
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Art Unit 3673

JJK